

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 12/21/09	NUMBER 05.01.150
SUBJECT SEXUAL PREDATOR DESIGNATIONS		SUPERSEDES 05.01.150 (08/27/07)	
		AUTHORITY MCL 791.203; 791.251 et. seq.	
		ACA STANDARDS NONE	
		PAGE 1 OF 3	

POLICY STATEMENT:

The Department shall identify and designate prisoners in Correctional Facilities Administration (CFA) institutions as sexual predators in accordance with this policy.

RELATED POLICIES:

03.03.140 Prohibited Sexual Conduct Involving Prisoners

POLICY:

GENERAL INFORMATION

- A. This policy only applies to prisoners who have used force, or the threat of force, to commit or to attempt to commit a non-consensual sexual act involving a victim of the same sex. Prisoners who have used force, or the threat of force, to commit or attempt to commit a non-consensual sexual act involving a victim of the opposite sex shall be identified and appropriate placement determined in accordance with PD 03.03.140 "Prohibited Sexual Conduct Involving Prisoners" and PD 05.01.140 "Prisoner Placement and Transfer".
- B. A prisoner designated as a homosexual predator prior to August 27, 2007 shall be considered a sexual predator for purposes of this policy.

DESIGNATION

- C. A prisoner may be designated as a sexual predator for purposes of this policy if there is verified documentation (e.g., a conviction, finding of guilt on a major misconduct, information in a jail report) that s/he used force, or the threat of force, to commit or attempt to commit a non-consensual act involving a victim of the same sex. However, if the victim was under 14 years of age at the time of the incident, the prisoner shall be designated as a sexual predator only with the approval of the CFA Deputy Director. The incident need not have occurred within an institutional setting.
- D. Staff shall complete a Notice of Sexual Predator Designation (CSJ-351) to designate a prisoner as a sexual predator. The designation shall be entered on the Department's computerized database (e.g., CMIS, OMNI).
- E. A prisoner designated as a sexual predator shall be rescreened for appropriate security classification in accordance with PD 05.01.130 "Prisoner Security Classification" and transferred if necessary.
- F. In accordance with PD 05.01.130 "Prisoner Security Classification" and PD 05.01.140 "Prisoner Placement and Transfer", a prisoner designated as a sexual predator shall not be classified to security Level I, II, or III, or placed in a double-bunked cell or room, without approval of the CFA Deputy Director or designee.

HEARING REQUIREMENTS

- G. Due to a court ruling, a prisoner designated as a sexual predator on or after April 16, 1999 may request

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/21/09	NUMBER 05.01.150	PAGE 2 OF 3
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a formal hearing to be conducted pursuant to Administrative Rule 791.3315 to contest the basis for that designation, unless the designation is based upon a guilty finding on the major misconduct of "Sexual Assault" which involves a victim of the same sex. A prisoner designated as a sexual predator based upon such a misconduct shall not be entitled to a second hearing on the designation, as the major misconduct hearing fulfills this hearing requirement.

- H. To request a hearing on his/her sexual predator designation, a prisoner must complete the appropriate section of the Notice of Sexual Predator Designation (CSJ-351) and send the completed Notice to the hearing investigator at the institution where the prisoner is housed. The hearing investigator shall interview the prisoner, if an interview is requested by the prisoner, and schedule a hearing to be conducted by a hearing officer in the State Office of Administrative Hearings and Rules (SOAHR), Department of Energy, Labor, and Economic Growth. The hearing shall be conducted no later than 60 calendar days after the request for a hearing is received by the hearing investigator. If the prisoner is transferred before the hearing is conducted, the hearing investigator shall ensure that the hearing request is sent directly to the hearing investigator at the receiving institution.
- I. The SOAHR hearing officer will determine whether the facts alleged in the Notice have been established by a preponderance of the evidence and whether those facts are sufficient to establish that the prisoner used force, or the threat of force, to commit or attempt to commit a non-consensual sexual act which involves a victim of the same sex. If the hearing is not conducted within 60 calendar days, the designation will be removed unless the hearing officer determines that the time requirements are waived by the prisoner or that there is reasonable cause for delay. Circumstances which the hearing officer may find to be reasonable cause for delay include, but are not limited to, an institutional disturbance, equipment failure, required attendance of all hearing officers at state-wide meetings, mobilization, or severe weather. The hearing officer will document his/her findings in an Administrative Hearing Report (CSJ-153).

APPEAL OF DESIGNATION

- J. If either the Warden or the prisoner disagrees with the SOAHR hearing officer's decision regarding the sexual predator designation, s/he may request a rehearing as set forth in PD 03.03.105 "Prisoner Discipline".
- K. A prisoner designated as a sexual predator based solely upon a guilty finding on the major misconduct of "Sexual Assault" which involves a victim of the same sex may appeal the designation by filing a grievance as provided for in PD 03.02.130 "Prisoner/Parolee Grievances", but may not grieve the SOAHR hearing officer's decision on the Sexual Assault misconduct. However, the prisoner may request a rehearing on the hearing officer's decision as set forth in PD 03.03.105 "Prisoner Discipline".

REMOVAL OF DESIGNATION BY CFA

- L. Whenever a discharged prisoner with a sexual predator designation returns with a new commitment, reception facility staff shall review the original basis for that designation and the conduct of the prisoner since the designation to determine whether there is a sufficient basis to believe that the prisoner no longer presents a threat as a sexual predator. A similar review shall be conducted for each prisoner designated as a sexual predator when s/he is rescreened for security classification pursuant to PD 05.01.130 "Prisoner Security Classification". If it is believed at the time of review by reception facility staff or at the time of rescreening for security classification that the prisoner may no longer present a threat as a sexual predator, the case shall be referred to the Warden for review. A prisoner designated as a sexual predator based on an incident which occurred five years or more in the past also may request removal of the designation by submitting a written request directly to the Warden for review.
- M. If the Warden believes that the prisoner may no longer present a threat as a sexual predator, s/he shall forward the case to the CFA Deputy Director, through the appropriate chain of command, for a final determination. Removal may be denied at any level of review. The CFA Deputy Director also may

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/21/09	NUMBER 05.01.150	PAGE 3 OF 3
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remove a sexual predator designation on his/her own initiative. The CFA Deputy Director shall ensure that notification of the determination is provided to the Warden, who shall ensure that the prisoner is notified.

- N. A prisoner whose request is denied may not request removal of the designation for at least one year after the date of the denial.

DOCUMENTATION

- O. If a sexual predator designation is not upheld by the SOAHR hearing officer or is removed by a court or the CFA Deputy Director, the hearing officer's decision, court order, or notification from the Deputy Director shall be retained in the prisoner's commitment files with the original documentation of designation. The sexual predator designation shall be promptly deleted from the Department's computerized database and the prisoner rescreened for appropriate security classification in accordance with PD 05.01.130 "Prisoner Security Classification".

REDESIGNATION

- P. Once a sexual predator designation is removed, a prisoner shall not be redesignated based solely on the original incident that was the basis for the removed designation. However, the prisoner may be redesignated as a sexual predator based on another incident, consistent with this policy.

PROCEDURES

- Q. Wardens shall ensure that operating procedures are developed as necessary to implement requirements set forth in this policy directive. Procedures shall be completed within 60 calendar days after the effective date of this policy directive. This includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

AUDIT ELEMENTS

- R. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: PLC 12/15/09